

Protection of Consumers Using Beauty Products Promoted by Marketing Influencers: A Comparative Study of the United States – Indonesia

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Article info

Received: Jan 22, 2025

Revised: March 25, 2025

Accepted: April 27, 2025

DOI: <https://doi.org/10.31599/krtha.v19i1.3693>

Abstract : *This study aims to determine the legal regulations and responsibilities of Influencers towards consumers in carrying out marketing or promotional practices on social media related to dangerous beauty products and containing misleading claims, and how they compare with the legal regulations in the United States, as well as the legal efforts that can be taken by consumers who suffer losses due to these marketing practices. The method used in this study is normative juridical with a statutory approach (Statute Approach) and a comparative approach (comparative approach). The results of the study show that there are no legal regulations that specifically regulate Influencer marketing practices in Indonesia, based on the UUPK, legal responsibility for consumer losses is only borne by business actors because the position of Influencers cannot be categorized as advertising business actors. In the United States, business actors and influencers are burdened with their responsibilities because their positions have been regulated by the Federal Trade Commission (FTC). However, influencers in Indonesia can still be sued for disseminating misleading information, as per Article 28 (1) of the ITE Law and Article 1365 of the Civil Code, for the claims they make.*

Keywords : *Consumer Protection, Influencers, Exaggerated Claims*

Abstrak : Penelitian ini bertujuan untuk mengetahui bagaimana pengaturan hukum serta tanggung jawab *Influencer* terhadap konsumen dalam melakukan praktik marketing atau promosi di media sosial terkait produk kecantikan yang berbahaya dan memuat klaim yang menyesatkan, serta bagaimana perbandingannya dengan pengaturan hukum yang ada di Amerika Serikat, juga upaya hukum yang dapat ditempuh konsumen yang mengalami kerugian akibat praktik marketing tersebut. Metode yang digunakan dalam penelitian ini adalah yuridis normatif dengan pendekatan perundang-undangan (*Statute Approach*) dan pendekatan perbandingan (*comparative approach*). Hasil penelitian menunjukkan bahwa belum ada peraturan hukum yang secara khusus mengatur terkait praktik marketing *Influencer* di Indonesia, berdasarkan UUPK tanggung jawab hukum atas kerugian konsumen hanya dibebankan kepada pelaku usaha karena kedudukan *Influencer* yang tidak dapat dikategorikan sebagai pelaku usaha periklanan. Di Amerika Serikat baik pelaku usaha dan *Influencer* dibebankan tanggung jawabnya sendiri-sendiri, sebab kedudukan *Influencer* sudah diatur dengan jelas melalui *Federal Trade Commission* (FTC). Namun *Influencer* di Indonesia masih dapat dituntut atas penyebaran informasi yang menyesatkan dengan Pasal 28 (1) UU ITE, serta Pasal 1365 KUHPerdata atas klaim yang mereka buat.

Kata kunci : Perlindungan Konsumen, *Influencer*, Klaim Berlebihan



I. INTRODUCTION

The development of Internet services has significantly impacted people's lives today. Rapid internet use requires all levels of society to adapt to various changes in internet services and facilities, including business actors who must always be ready to adapt to the development of information and technology, especially in the use of social media to promote goods and services to the public faster and more effectively.

Bank Indonesia data shows that in 2022, several online buying and selling transaction values in Indonesia have been recorded, amounting to almost IDR 476.3 trillion.¹ Based on the number of buying and selling transactions on online media, we can say that changes in product promotion patterns must also shift from traditional promotional methods to modern promotions through social media or digital marketing.

Digital marketing can be done through social media, such as Instagram, TikTok, YouTube, Facebook, or X, as an application that can connect people. In practice, when promoting a product through social media (online), manufacturers often use the services of influencers, or what is known as an endorsement. Influencer comes from English, which starts with the word influence. So, in essence, an Influencer is someone on social media who has many followers and influences others.² (Hariyanti & Wirapraja, 2018) argue that influencers are very influential in shaping consumer perceptions and behavior because they act as public opinion leaders.³ (Scott, 2015) then stated that marketing carried out with influencer services is a marketing strategy to increase consumer purchasing decisions and drive brand awareness with the use of opinion leaders.⁴

Endorsement is a cooperation agreement made by a business owner with an influencer, which gives rise to rights and obligations for the parties in promoting a product owned by the business actor.⁵ In the agreement, the influencer will receive money for carrying out his obligations to promote products through social media to build a good societal mindset towards the products he promotes. This is what encourages people to buy products that an Influencer has promoted. In general, Influencers promoting a particular product will make reviews that show the advantages of the product she is promoting regardless of whether they have actually used it or not.

¹ Adi Kurniawan, "Pengaruh Penggunaan Influencer Marketing dan Video Marketing Terhadap Perilaku Pembelian Konsumen", *Holistik Analisis Nexus*, Vol. 1 No. 7, (2024) : 148.

² Muhammad Nasih, dkk., "Influencer dan Strategi Penjualan : Studi Netnografi Pada Pengguna Jasa Selebgram Sebagai Media Promosi", *Benefit Jurnal Manajemen dan Bisnis*. Vol.5 No.2, (2020) : 137, [10.23917/benefit.v5i2.11305](https://doi.org/10.23917/benefit.v5i2.11305).

³ Novi Tri Hariyanti, Alexander Wirapraja, "Pengaruh Influencer Marketing Sebagai Strategi Pemasaran Digital Era Moderen (Sebuah Studi Literatur)", *Jurnal Eksekutif*, Vol.15 No.1, (2018) : 146

⁴ David Meerman Scott, *The New Rules of Marketing and PR : How to use social media, onlien video, mobile applications, blogs, news releases and viral marketing to reach buyers directly*, (John Wiley, New Jersey, 2011) : 169.

⁵ Siti Sayyidah Suryaningsih, Encep Abdul Rojak, Neng Dewi Himayasari, "Analisis Fiqh Muamalah dan Pasal 1320 Kuhperdata Terhadap Perjanjian Endorsement melalui Direct Message", *Jurnal Riset Ekonomi Syariah*. Vol.3 No.2, (2023) : 92, <https://doi.org/10.29313/jres.v3i2.2790>

This is because the approach taken by an influencer is only in the form of reviews. Influencers who have a good image among their followers will be more easily trusted when providing a review regarding a product.

However, on the positive side, it has proven effective, especially in influencing people's decisions to buy a product. This endorsement or Influencer marketing activity also has a negative side. We can find this in cases of manipulation carried out by several Influencers, where they often exaggerate a review of the products they promote, this can be seen in cases of beauty product endorsements, where Influencers often provide reviews of the advantages of a product with a narrative that they have used the product so that it produces beautiful and healthy facial skin conditions. However, it was discovered that the narrative they gave their followers was manipulated because they did not use the beauty product. Not infrequently, influencers do not understand that the products they promote have dangerous side effects.

In promoting a product, Influencers will only reveal the advantages of a product they are working with. This can certainly be detrimental to society because the reviews from an Influencer are not entirely true. In Indonesia itself, there have been several cases of Influencers involved in endorsement activities for illegal and dangerous beauty products, including Influencer artists with the initials VV, MP, NR, DJB, NK, and DK, who promote Derma Skincare or DSC Beauty, which are products with dangerous and illegal mixtures.⁶ There is also a Tiktok account with the initials PBS, which has many followers; she then advertised Tabita Skincare products through her TikTok platform, which are known to contain Mercury and Hydroquinone.⁷ Other influencers promoting dangerous beauty products are AT, DD, and O, who have shared promotional posts through their Instagram social media about Hetti Nugrahati or HN products, which contain 99% mercury and do not have a BPOM distribution permit.⁸

Based on the many cases of dangerous beauty product promotions carried out by Influencers, the author considers it important to study this issue in more depth. Especially in terms of regulations on Influencer marketing practices, considering that until now, at the national level, there has been no precise regulation regarding Influencer marketing practices in promoting goods or services to protect the public (consumers). Meanwhile, in United States, provisions regarding Influencer marketing practices have been regulated by national law. So, United States will be used as a best practice in regulating Influencer marketing activities, especially for cosmetic products. The position of influencers as parties who carry out promotional activities through social media in Indonesia, which until now is still unclear legally, has made the author interested in conducting further research because the change in promotional trends that were initially

⁶ Hilda Meilisa Rinanda. "Polisi Amankan Kosmetik Ilegal yang Endorse 6 Artis Indonesia" diakses melalui <https://news.detik.com/berita-jawa-timur/d-4330233/polisi-amankan-kosmetik-ilegal-yang-endorse-6-artis-indonesia>, pada 10 September 2024 pukul 19.00 WIB

⁷ Sehat Negeriku Kemkes, diakses melalui <https://sehatnegeriku.kemkes.go.id>, pada 10 September 2024 pukul 19.21 WIB.

⁸ Ela Aprida Nafliana, "Penegakan Hukum Terhadap Influencer yang Mengiklankan Produk Kosmetik Ilegal Pada Platform Media Sosial Instagram di Wilayah Kepolisian Resor Kota Pekanbaru", *Jurnal Ilmiah Bidang Sosial Ekonomi, Budaya, Teknologi, dan Pendidikan*, Vol.2 No.5, (2023) : 1428, <https://doi.org/10.54443/sibatik.v2i5.804>

carried out conventionally has now shifted to the trend of influencer marketing. The legal vacuum that specifically regulates influencer promotional activities has created a new problem related to ethical and legal violations in the influencer marketing industry. The legal position of an influencer in the world of marketing in Indonesia is still not regulated, giving rise to various new problems, especially in terms of accountability and consumer protection. This looks different from the regulations in the United States, which already has a comprehensive legal framework for regulating these activities.

Based on the description of the problem above, the researcher considers it important to raise this problem with the key issue: first, how consumer protection is in Indonesia and the United States. Second, What legal efforts can be made for consumers who experience losses due to purchasing beauty products promoted by influencers.

Research related to this issue has also been raised by previous researchers, including research stating that business actors who advertise a product with misleading information violate Law Number 8 of 1999 concerning Consumer Protection (Yasid & Sakdiah, 2021). Furthermore, research by Kuncoro, Syamsudin, et al. Regarding consumer protection for product advertisers (business actors) who include excessive claims on the name or percentage of content of their skincare products as a marketing strategy in the advertisements being promoted (Kuncoro, Syamsudin, et al. 2024). Then, regarding the responsibility of business actors for consumer losses due to promotions through endorsers based on regulations in Indonesia (Putri et al., 2019). The description of several previous studies shows an element of novelty because this study more specifically discusses consumer protection against influencer marketing activities, where researchers prioritize the influencer aspect, including their position and responsibilities in regulations in Indonesia and the United States.

II. RESEARCH METHOD

This research is juridical-normative legal research, and this methodology produces a finding that can be accounted for in its validity.⁹ Juridical-normative legal research itself is a research that focuses on a rule or law that exists in a problem to be studied.¹⁰ Soerjono Soekanto stated that normative juridical research is a legal research conducted using library materials or secondary data as a basis for research by studying regulations and literature that are related to a problem to be studied.¹¹ The Problem Approaches used in this study are the Statute and comparative approaches. The comparative approach compares a law in one country with the law in another country regarding a problem.¹² The data sources used in this study are primary legal materials, such as laws and regulations related to the study's title, and secondary legal materials, such as sources of legal knowledge, including books, scientific articles, theses, and news. Data collection uses library research techniques to examine various theories, opinions,

⁹ Rosady Ruslan, *Metode Penelitian*, (Jakarta : PT RajaGrafindo Persada, 2011) : 24.

¹⁰ Soejono. H. Abdurahman, *Metode Penelitian Hukum*, (Jakarta : Rineka Cipta, 2003) : 56

¹¹ Soerjono Soekanto dan Sri Mamudja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta : Rajawali Pers, 2001) : 13-14.

¹² Muhaimin, *Metode Penelitian Hukum*, (Mataram : Mataram University Press, 2020) : 57.

and main ideas from printed media, such as books that align with the studied problems.¹³ The analysis technique used in this study is descriptive analysis.

III. DISCUSSION

Consumer protection against beauty product promotion activities through Influencer marketing in Indonesia and the United States

Legal protection is a legal provision made to protect every legal subject regarding the rights they have.¹⁴ In the context of consumer protection, the law ensures that a person's rights as a consumer can be fulfilled, as well as an effort to prevent and resolve disputes.¹⁵ In this case, the law has regulated a consumer's rights through Article 4 of the Consumer Protection Act. However, along with the development of the times, although the rights of a consumer have been regulated through laws and regulations, it is not uncommon in practice that there are still consumer rights that cannot be fulfilled, including the right to receive goods in the proper condition, as well as guarantees that are in accordance with what was promised, including the right to correct, transparent and honest information regarding the condition and guarantee of the goods offered (promoted). Guarantees of protection of these rights are often ignored and not obtained by consumers, especially in marketing or promotional activities.

Marketing or promotional activities are explained in Article 1 paragraph (6) of the UUPK, which states that "promotional activities are activities to introduce or disseminate information about a type of goods and/or services of business actors to attract consumer interest in buying". In these promotional activities, business actors often use Influencer services as a new marketing technique, where it is known that the use of Influencer services itself has proven effective in influencing people's decisions in purchasing a product, where 78.4% of online product purchases are influenced by Influencer marketing.¹⁶ So it is not surprising that the use of Influencer marketing services is currently widely chosen by business actors to promote their products.

However, the use of Influencer marketing services also still invites various problems, especially in promoting beauty products that utilize the services of an Influencer. An Influencer often provides a review of a beauty product with a narrative that explains that they are active users of the product in their daily lives, such as the use of Influencer services by an artist with the initials VV who carried out Influencer marketing activities or endorsements for Derma Skincare or DSC Beauty products which are known to be dangerous illegal products that are not registered with BPOM. In an interview, she admitted that she only used the product briefly for endorsement

¹³ Jonathan Sarwono, *Pintar Menulis Karya Ilmiah*, (Yogyakarta : Andi Offset, 2010) : 34-35.

¹⁴ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya : Bina Ilmu, 1987) : 25.

¹⁵ Oti Handayani, Esther Masri, "Perlindungan Konsumen Produk Skincare Pada Penjualan Secara Online", *Jurnal Krtha Bhayangkara*, Vol. 17, No. 3 (2024) : 487, <https://doi.org/10.31599/krtha.v17i3.781>

¹⁶ Ida Bagus Nyoman. Lusi Tria Hatmanti Hutami. Faturrahman Imam Hanafi, "Dampak Influencer Marketing dan Online Customer Reviews Terhadap Online Purchase Decision Dimediasi Oleh Customer Trust", *JPEK Jurnal Pendidikan Ekonomi dan Kewirausahaan*, Vol. 8, No.1, (2024) : 213, <https://doi.org/10.29408/jpek.v8i1.24913>

purposes, and she used other skincare products in her daily life. In the interview, she was asked by a journalist whether there were any side effects from the products she used, she then said: *“gak tau ya, waktu itu cuma pake sebentar tok yang facial wash nya aja karena baunya sama kaya sabun yang saya pakai, jadi yaudah saya pakai juga”*.¹⁷

The many cases of Influencer marketing promoting goods with misleading narratives regarding conditions, quality, materials, and other incorrect information have harmed consumers. In fact, Law Number 8 of 1999 concerning Consumer Protection (UUPK), specifically Article 17 (1) clearly stipulates that "advertising business actors are prohibited from producing advertisements that deceive consumers regarding the quality, quantity, materials, uses and prices of goods and service rates, as well as the accuracy of receipt of goods. Deceiving guarantees, containing incorrect information, not containing information regarding the risks of using goods, exploiting events or someone without permission, and violating ethics or provisions of laws and regulations related to advertising". Furthermore, Article 20 of the UUPK also explains that advertising business actors are responsible for the advertisements produced and all consequences caused by the advertisements. However, the consumer protection law does not explain in detail who the advertising business actors referred to in this law are, including the Influencer category as advertising business actors. If we refer to Az Nasution's opinion, he stated that there are 3 (three) categories of advertising business actors, namely: First: Advertisers or companies that order advertisements to be promoted, marketed, or to offer products to be distributed. Second, is the Advertising Company, an agency or company engaged in the advertising and design business sector. Third is the Media, namely the electronic and non-electronic means that broadcast the advertisements.¹⁸

Referring to Az Nasution's opinion above, indirectly, the role of Influencers does have the same function as advertising agencies. However, Influencers in this context stand alone without a company behind them. Influencers only use their social media as a means of promoting products. So, we can conclude that Influencers are not included in the category of advertising business actors. Influencers are positioned only as liaisons between business actors and consumers. So if a consumer experiences a loss, based on Law Number 8 of 1999 concerning Consumer Protection, the responsibility is borne by the business actor and not the Influencer, as Az Nasution's opinion explains that one category of advertising business actors is advertisers, namely companies that order advertisements.

Referring to Law Number 32 of 2002 concerning Broadcasting, Article 1 (6) explains that "commercial advertising broadcasts are commercial advertising broadcasts broadcast via radio or television with the aim of introducing, popularizing and/or promoting goods or services to the target audience to influence consumers to use the products offered." Article 1 (9) explains that "Broadcasting institutions are broadcasting operators, whether public broadcasting institutions, private broadcasting institutions, community broadcasting institutions or broadcasting institutions that violate violations."

¹⁷ Redaksi Trans7 Official, "Via Vallen Penuhi Panggilan Penyidik Kasus DSC Beauty" diakses melalui <https://www.youtube.com/watch?v=wEmHug7usYM&list=LL&index=1>, 29 Desember 2024 pukul 12.47.

¹⁸ Az Nasution, *Hukum Perlindungan Konsumen*, (Jakarta : Diadit Media, 2007) : 253

Based on several provisions of the article above, Influencers as individuals who carry out promotions through their social media are not included in broadcasting institutions according to this Law. Influencers are also not included in the broadcasting services category because if we look at Article 13 (1) of the Broadcasting Law, it is explained that "Broadcasting services consist of radio broadcasting services and television broadcasting services," so Influencers who use social media platforms are not included in the broadcasting services category.

Based on the description above, it can be interpreted that there are no specific regulations governing the legal status of influencers in Indonesia, especially in marketing or promotional practices carried out by Influencers. This is very different if we compare it with the regulations regarding consumer protection that apply in the United States (US). The US has a special institution known as the Federal Trade Commission (FTC). This institution is an independent institution tasked with overseeing business competition and consumer protection, which is formed based on the Federal Trade Commission Act.¹⁹ The FTC also has the authority to issue a regulation that explicitly regulates marketing activities for a product involving Influencers, known as the FTC 16 CFR Part 255 Guides Concerning the Use of Endorsement and Testimonial in Advertising, or can also be referred to as the FTC Guides.

The FTC Guides regulate several things related to Influencer marketing practices, namely²⁰ :

- a. Delivery of promotional content containing honest opinions regarding the Influencer's findings, beliefs or experiences in representing a product;
- b. Advertisers can use an Influencer to endorse or promote, or can also use an expert, as long as the endorser or someone appointed to promote the product, whether an Influencer or an expert, remains steadfast in their views regarding the performance or effectiveness of the product;
- c. If the promotional content represents that an Influencer uses the product, then he or she must truly be a bona fide user of the product;
- d. In addition to the advertiser, endorsers or Influencers involved in the creation of promotional content can also be held accountable for statements that are inappropriate and unfounded, as well as failure to disclose material relationships between the advertiser and an endorser or Influencer.

The FTC Guides have also defined "endorsement" itself as follows: "Any advertising message (including oral statements, demonstrations, or depictions of a person's name, signature, likeness, or other personally identifiable characteristics or the name or seal of an organization) that consumers believe reflects the opinions, beliefs, findings, or experiences of a party other than the advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. The party whose

¹⁹ 15 U.S.C. 45 – Unfair Methods of competition unlawful; prevention by commission, Chapter 2, Subchapter 1: Federal Trade Commission, Diakses melalui <https://www.govinfo.gov/app/details/USCODE-2011-title15/USCODE-2011-title15-chap2-subchapI-sec45/context>, pada 2 Januari 2025 pukul 13.38.

²⁰ Federal Trade Commission, Diakses melalui <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>, pada 6 Januari 2025 pukul 11.41.

opinions, beliefs, findings, or experiences appear in a message is called the endorser and may be an individual, group, or institution.”

In addition, the FTC Guides also divides the regulations related to endorsements into three categories, namely endorsements made by consumers, experts, and organizations. Where endorsements use consumers to advertise a product, the advertiser must have scientific evidence to support the statements contained in the advertisement, in addition, consumers here must also be actual consumers or bona fide consumers of the product in question, and if not, it must be stated explicitly.²¹ Through this provision, of course, there is an effort to provide clarity regarding the status of the endorsement.

The use of experts in marketing or endorsement activities must also pay attention to the expertise and qualifications of experts relevant to the product to be promoted.²² So that every statement conveyed in promoting a product can be accounted for based on the expertise they have. For example, a beauty doctor who makes a statement in an advertisement or promotion that the beauty product he is promoting will safely help consumers overcome their skin conditions in 30 (thirty) days. If the statement is taken from the assessment of a consumer or from a rodent sample alone, then the advertising material provided by the doctor is likely to provide misleading information because the material from the doctor's statement is not the type of scientific evidence that can support statements about the safety and efficacy of the product, in which case both the advertiser and the doctor can be held responsible for the statements that have been issued.²³ While endorsements made by an organization, especially organizations with expert membership, will be seen as an assessment of collective experience and not an assessment from individual to individual members. So that endorsements made by organizations must go through an assessment process from several experts to meet the standards before the benefits of the product to be promoted.²⁴

In addition, the FTC Act also clearly regulates the prohibition of competitive methods, practices, and fraud that can affect trade. Where these things are a violation of the law.²⁵ So if there is a material relationship between a business actor and an Influencer or someone to carry out marketing or promotional practices, then the relationship must be fully disclosed to ensure its credibility. This is also contained in the directive issued by the FTC through "Disclosure 101 for Social Media Influencers," which states the requirement for disclosure of material relationships between business actors and Influencers in endorsement activities.²⁶ Influencers or someone who promotes can disclose the material relationship that exists by simply providing a description such as "advertisement", or "sponsored", or a thank you to the business

²¹ *Ibid*, Bagian 255.2 huruf (a) – (c)

²² *Ibid*, Bagian 255.3 huruf (a) – (b)

²³ *Ibid*, Bagian 255.3 huruf (c)

²⁴ *Ibid*, Bagian 255.4.

²⁵ Federal Trade Commission Act, Bagian 45(a) Declaration of unlawfulness

²⁶ Federal Trade Commission, “Disclosure for Social Media Influencer”, diakses melalui https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf, pada 6 Januari 2025 pukul 18.58.

actor who has provided the product for free. The material relationship statement can be placed on the photo or said in video content and live broadcasts. Influencers must then comply with the rules issued by the FTC Guides, where violations of these rules can result in Influencers receiving a fine of up to \$10,000 for each violation.²⁷

Based on the various regulations above, we can conclude that basically the regulations in the United States through the Federal Trade Commission Act and the FTC 16 CFR Part 255 Guides Concerning the Use of Endorsement and Testimonial in Advertising, or can also be called the FTC Guides, are indeed more comprehensive in regulating Influencer marketing practices. The FTC regulates in detail how an Influencer's obligations and responsibilities are in conducting marketing to protect consumers from detrimental practices.

Legal efforts that can be taken by consumers who experience losses due to the purchase of beauty products promoted by Influencers

Referring to Law Number 8 of 1999 concerning Consumer Protection, if there is a loss experienced by consumers in Influencer marketing practices, the one who can be held accountable is the business actor and not the Influencer, because the position of the Influencer itself is still not clearly regulated in the laws and regulations in Indonesia.

However, if we refer to Law Number 1 of 2024 concerning Information and Electronic Transactions (UU ITE), it is explained in Article 28 paragraph (1) that anyone who intentionally spreads misleading information can be subject to imprisonment and a fine by the provisions of Article 45A paragraph (1). This provision can at least be a concern for Influencers when carrying out marketing or promotional practices for a product through their social media. However, in practice, Influencers still violate the provisions that are clearly prohibited by this law. Moreover, in the context of endorsements of beauty products carried out by Influencers with the narrative that they are bona fide users of the promoted products, it will be very difficult for consumers to know the truth of the claim, so according to the author in the realm of Influencer marketing on beauty products, the use of Article 28 of the ITE Law is considered too general and can create legal loopholes for Influencers who are not aware of their responsibility in providing true information.

This also aligns with the Derma Skincare or DSC Beauty case involving artists or Influencers with the initials VV and NK. In this case, VV and NK, who promoted the product, were only used as witnesses in court. The use of Article 28 of the ITE Law itself was not imposed on the Influencers because they were deemed not to have the intention to spread misleading information as stated in Article 28 paragraph (1), where in their statement, they stated that they did not first check the credibility of the safety of the products they promoted so that they did not know the safety of the products.²⁸ In reality, Article 28 paragraph (1) of the ITE Law can indeed be used as a legal remedy for consumers who feel disadvantaged. However, the Influencer must be proven to have

²⁷ Federal Trade Commission Act, Bagian 45(l) Penalty for Violation of order

²⁸ Putusan Nomor 1555/Pid.Sus/2019/Pn.Sby

intentionally spread false information regarding the safety of the products they promoted.

In addition to the use of Article 28 paragraph (1) of the ITE Law, consumers who feel aggrieved can also report Influencers with Article 1365 of the Civil Code concerning unlawful acts. Where based on the provisions of this article, the principle of Liability on Fault or the principle of responsibility based on error is known, where Influencers can be held responsible based on their mistakes in carrying out marketing or promotional practices with misleading narratives and deviating from the provisions regulated in the Consumer Protection Law concerning consumer rights.²⁹ Although in the process, the use of this article must meet 4 (four) elements, namely, the existence of an element of action, the existence of an element of error, the existence of an element of loss, and a causal relationship or cause and effect relationship. Based on several of these elements, consumers who experience losses due to Influencer marketing activities can prove the four elements carried out by Influencers in their marketing activities.

In the case of Influencers promoting beauty products, elements of unlawful acts can be found; First, namely the element of the act in the form of activities to promote the beauty product itself, either with a misleading narrative in the form of claims that they are bona fide users of the product, or claims related to the efficacy, benefits, and safety of the product itself. Second, the element related to the error which in the case of Influencer marketing activities can be seen from their error in violating Article 4 letter (c) of the Consumer Protection Law regarding consumer rights to correct, clear and honest information regarding the condition and guarantee of goods and/or services. As well as the provisions of Article 3 paragraph (2) of BPOM Regulation Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims, which states that claims in advertisements must meet the criteria in the form of legal compliance, truth, honesty, fairness, can be proven, clear and easy to understand, and must not state as if it were a medicine or intended to prevent a disease. The third is the element of loss, where consumers must prove that they have suffered losses due to Influencer marketing activities. And the fourth is the element of causal relationship, where it must be proven that these Influencer marketing activities cause losses to consumers either materially, physically or health-wise. so even though the position of Influencers is still not clearly regulated in Indonesia, consumers can still seek or sue Influencers as an inseparable part in cases of beauty products that often overclaim both about product safety, efficacy, ingredients, warranties, or information provided when promoting.

From the various problems that have been described above, the Author assesses that the provisions in Article 28 paragraph (1) of Law Number 1 of 2024 concerning Electronic Information and Transactions and Article 1365 of the Civil Procedure Code can at least be a regulation for legal protection efforts for consumers amid the absence of legal provisions that are not sufficient to avoid or protect consumers from misleading Influencer marketing practices. A precise regulation or legal protection is needed as

²⁹ Ismi Azizah, Mohammad Zamroni, Agung Promono, "Perlindungan Hukum Konsumen Terhadap Kosmetik Ilegal yang Diiklankan Influencer di Media Sosial", *Innovative: Journal Of Socil Science Research*, Vol. 4, No.3, (2024) : 6, <https://doi.org/10.31004/innovative.v4i3.11118>

preventive legal protection that specifically regulates Influencer marketing activities in Indonesia because consumers who use a beauty product that contains hazardous materials and do not get the results they want will undoubtedly feel disadvantaged and deceived by the advertisements made by Influencers. However, this loss does not immediately make consumers demand their rights and ask for accountability from either the business actor or the Influencer because of their inability to hire a lawyer, examine the evidence obtained in the laboratory, or pay court costs.³⁰ So this is where the function of the law is, which, in fact, contains principles and rules that are intended to regulate and protect the interests of consumers.

So even though Influencers who carry out misleading and deceptive marketing practices can still be prosecuted under Article 28 paragraph (1) of the ITE Law or Article 1365 of the Civil Code, we still encounter many problems related to endorsement or Influencer marketing. Special regulations related to Influencers are important to be formed immediately so that Influencers can apply caution in carrying out promotions because there are rules regarding matters related to Influencers.

As with the applicable legal regulations in the United States regarding the FTC 16 CFR Part 255 Guides Concerning the Use of Endorsement and Testimonial in Advertising (FTC Guides) regulation, where the regulations issued by the FTC Guides can prevent various potential losses for consumers because the FTC there are clear guidelines regarding what is and is not allowed to be done in every Influencer marketing activity. Where in addition to providing regulations related to Influencer marketing practices, the FTC, as an institution that works to oversee business competition and consumer protection, not only receive reports from the public but can actively supervise and immediately send warning letters to Influencers who are suspected of violating the rules in the FTC Guides.³¹ So if a deviation is found by an Influencer in marketing or promotional practices, the FTC can move quickly to warn the Influencer of the mistakes made so that they can be corrected immediately.

IV. CONCLUSION

Based on the description of the problem analysis above, in the Indonesian legal system, there are no regulations that specifically regulate Influencer marketing activities through online media. Both in the Consumer Protection Law Number 8 of 1999, the Press Law Number 40 of 1999, and the Broadcasting Law Number 32 of 2002, especially the rules regarding the legal status of an Influencer. Meanwhile, in the United States, the Use of Influencers in marketing a product through online media has been regulated in the FTC 16 CFR Part 255 Guides Concerning the Use of Endorsement and Testimonial in Advertising (FTC Guides), which clearly regulates the position, responsibilities, and obligations of Influencers in carrying out marketing practices through online media. Based on this regulation, the United States ensures that consumer protection can be adequately guaranteed, including in Influencer marketing activities.

³⁰ Rista Yuliani. Tanggung jawab influencer atas kasus endorsement produk palsu dalam upaya perlindungan konsumen, Skripsi thesis, Universitas Pembangunan Nasional Veteran Jakarta, (2022): 55.

³¹ Federal Trade Commission Act, Bagian 45(b)

The many cases of losses experienced by consumers who buy products due to the influence of Influencer marketing, which often makes misleading claims, should be the basis for the Indonesian government to be able to adopt regulations from various countries such as the United States, which have specifically regulated marketing practices carried out by Influencers. Although consumers who experience losses due to the use of products promoted by Influencers can still seek legal action through Article 28 paragraph (1) of the ITE Law and Article 1365 of the Civil Code concerning unlawful acts, provided that several elements contained therein are met. The author considers that the formation of a regulation related explicitly to Influencer marketing practices is important because the use of Article 28 paragraph (1) of the ITE Law and Article 1365 of the Civil Code concerning unlawful acts is considered too general, and can create legal loopholes for parties who are not aware of their obligations in conveying accurate information.

The legal vacuum related to the regulation of Influencer marketing practices, especially in the Consumer Protection Law Number 8 of 1999, faced with the increasingly massive violations of consumer protection due to the use of Influencer services to market a product, especially beauty products, the Government needs to immediately create a special regulation related to Influencer marketing practices to provide clear legal protection for consumers, especially those who buy a product because of excessive claims by the Influencer.

REFERENCES

- 15 U.S.C. 45 – Unfair Methods of competition unlawful; prevention by commission, Chapter 2, Subchapter 1: Federal Trade Commission, Diakses melalui <https://www.govinfo.gov/app/details/USCODE-2011-title15/USCODE-2011-title15-chap2-subchapI-sec45/context>, pada 2 Januari 2025 pukul 13.38.
- Adi Kurniawan, “Pengaruh Penggunaan Influencer Marketing dan Video Marketing Terhadap Perilaku Pembelian Konsumen”, *Holistik Analisis Nexus*, Vol. 1 No. 7, (2024) : 148
- Adinda Ayu Puspita Kuncoro, dkk, “Perlindungan Konsumen Terhadap Overclaim Produk Skincare”, *Prosiding Seminar Hukum Aktual*, (2024).
- Az Nasution, *Hukum Perlindungan Konsumen*, (Jakarta : Diadit Media, 2007) : 253.
- David Meerman Scott, *The New Rules of Marketing and PR : How to use social media, onlien video, mobile applications, blogs, news releases and viral marketing to reach buyers directly*, (John Wiley, New Jersey, 2011) : 169.
- Dian Syah Putri, dkk, “Tanggung Jawab Artis Endorser Terhadap Konsumen Atas Kosmetik Ilegal Yang Diiklankan”, *Diponegoro Law Journal*, Vol.8, No.3, (2019).
- Ela Aprida Nafiana, “Penegakan Hukum Terhadap Influencer yang Mengiklankan Produk Kosmetik Ilegal Pada Platform Media Sosial Instagram di Wilayah Kepolisian Resor Kota Pekanbaru”, *Jurnal Ilmiah Bidang Sosial Ekonomi, Budaya, Teknologi, dan Pendidikan*, Vol.2 No.5, (2023) : 1428, <https://doi.org/10.54443/sibatik.v2i5.804>
- Federal Trade Commission, “Disclosure for Social Media Influencer”, diakses melalui https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf, pada 6 Januari 2025 pukul 18.58
- Federal Trade Commission, Diakses melalui <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>, pada 6 Januari 2025 pukul 11.41.
- Hilda Meilisa Rinanda. “Polisi Amankan Kosmetik Ilegal yang Endorse 6 Artis Indonesia” diakses melalui <https://news.detik.com/berita-jawa-timur/d-4330233/polisi-amankan-kosmetik-ilegal-yang-endorse-6-artis-indonesia>, pada 10 September 2024 pukul 19.00 WIB.
- Ida Bagus Nyoman. Lusi Tria Hatmanti Hutami. Faturrahman Imam Hanafi, “Dampak Influencer Marketing dan Online Customer Reviews Terhadap Online Purchase Decision Dimediasi Oleh Customer Trust”, *JPEK Jurnal Pendidikan Ekonomi dan Kewirausahaan*, Vol. 8, No.1, (2024) : 213, <https://doi.org/10.29408/jpek.v8i1.24913>
- Ismi Azizah, Mohammad Zamroni, Agung Promono, “Perlindungan Hukum Konsumen Terhadap Kosmetik Ilegal yang Diiklankan Influencer di Media Sosial”, *Innovative: Journal Of Socil Science Research*, Vol. 4, No.3, (2024) : 6, <https://doi.org/10.31004/innovative.v4i3.11118>.
- Jonathan Sarwono, *Pintar Menulis Karya Ilmiah*, (Yogyakarta : Andi Offset, 2010) : 34-35.
- Muhaimin, *Metode Penelitian Hukum*, (Mataram : Mataram University Press, 2020) : 57.
- Muhammad Nasih, dkk., “Influencer dan Strategi Penjualan : Studi Netnografi Pada Pengguna Jasa Selebgram Sebagai Media Promosi”, *Benefit Jurnal Manajemen dan Bisnis*. Vol.5 No.2, (2020) : 137, [10.23917/benefit.v5i2.11305](https://doi.org/10.23917/benefit.v5i2.11305).

- Muhammad Yasid, Nur Sakdiah, “Perlindungan Hukum Terhadap Konsumen Atas Produk Obral Dengan Iklan Tanpa Informasi Yang Jelas”, *Jurnal Rectum*, Vol.3, No.2, (2021).
- Novi Tri Hariyanti, Alexander Wirapraja, “Pengaruh Influencer Marketing Sebagai Strategi Pemasaran Digital Era Moderen (Sebuah Studi Literatur)”, *Jurnal Eksekutif*, Vol.15 No.1, (2018) : 146
- Oti Handayani, Esther Masri, “Perlindungan Konsumen Produk Skincare Pada Penjualan Secara Online”, *Jurnal Krtha Bhayangkara*, Vol. 17, No. 3 (2024) : 487, <https://doi.org/10.31599/krtha.v17i3.781>
- Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya : Bina Ilmu, 1987) : 25.
- Putusan Akhir Majelis Hakim Pengadilan Negeri Surabaya Nomor 1555/Pid.Sus/2019/Pn.Sby
- Redaksi Trans7 Official, “Via Vallen Penuhi Panggilan Penyidik Kasus DSC Beauty” diakses melalui <https://www.youtube.com/watch?v=wEmHug7usYM&list=LL&index=1>, 29 Desember 2024 pukul 12.47.
- Rista Yuliani. Tanggung jawab influencer atas kasus endorsement produk palsu dalam upaya perlindungan konsumen, Skripsi thesis, Universitas Pembangunan Nasional Veteran Jakarta, (2022): 55
- Rosady Ruslan, *Metode Penelitian*, (Jakarta : PT RajaGrafindo Persada, 2011) : 24.
- Sehat Negeriku Kemkes, diakses melalui <https://sehatnegeriku.kemkes.go.id>, pada 10 September 2024 pukul 19.21 WIB.
- Siti Sayyidah Suryaningsih, Encep Abdul Rojak, Neng Dewi Himayasari, “Analisis Fiqh Muamalah dan Pasal 1320 Kuhperdata Terhadap Perjanjian Endorsement melalui Direct Message”, *Jurnal Riset Ekonomi Syariah*. Vol.3 No.2, (2023) : 92, <https://doi.org/10.29313/jres.v3i2.2790>
- Soejono. H. Abdurahman, *Metode Penelitian Hukum*, (Jakarta : Rineka Cipta, 2003) : 56
- Soerjono Soekanto dan Sri Mamudja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta : Rajawali Pers, 2001) : 13-14.